IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 3951 of 1996

Between:

D.Ramachandra Reddy, S/o. Appa Rao.
R/o 36-13-2/4, Kothareddy Kancharpalem,
Visakhapatnam.

..... PETITIONER

AND

1 The Board of Trustees, Rep. Chairman,
Visakhapatnam Port Trust, Visakhapatnam.
2 The Chief Mechanical Engineer, Visakhapatnam Port Trust,
Visakhapatnam.
3 Sri P.Syam Sundar,
Chargehand (Machinist) (Adhoc), PWS Division,
Mechanical Department, Visakhaptnam Port Trust, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the 1st and 2nd respondents in appointing the 3rd respondent by promotion to the post of Chargehand (Machinist) on ad hoc basis by office order No. CME/E/C/PWS/954, dated 10/02/1996 ignoring the legitimate claim of the petitioner and trying to fill up the said vacancy alleging that the vacancy is the carry forward point for SC candidate as per the roaster, as arbitrary, illegal and violative of article 16 of the Constitution of India by issuing a writ order or direction more particularly one in the nature of Writ of Mandamus, consequently direct the 1st and 2nd respondents, to consider the candidature of the petitioner for promotion to the post of Chargehand (Machinist).

Counsel for the Petitioner: Mr. G.RAMA GOPAL

Counsel for Respondents 1&2: Mr. K.SRINIVASAMURTHY

Counsel for Respondent No.3: None appeared

The Court made the following :

JUDGMENT:

This writ petition is filed seeking a Mandamus to declare the action of respondents 1 and 2 in promoting the 3rd respondent to the post of Chargehand (Machinist) on *ad hoc* basis vide Office Order No.CME/E/C/PWS/954, dated 10-2-1996 ignoring the legitimate claim and right of the petitioner as arbitrary and illegal and consequently to direct respondents 1 and 2 to consider the candidature of the petitioner for promotion to the post of Chargehand (Machinist).

It is the case of the petitioner that he was appointed as a Machinist Grade II with effect from 12-3-1970 and subsequently promoted as Machinist Grade I with effect from 1-4-1977. His probation in the cadre of Machinist Grade I was also declared to have been completed vide Office Order dated 14-9-1993. Machinist Grade I is a feeder post for promotion to the category of Chargehand (Machinist). As per Recruitment Rules of Visakhapatnam Port Trust, Chargehand (Machinist) post is a selection post. During the year 1994, a Departmental Selection Committee was constituted and selections were held on 22-6-1994. By a communication dated 20-9-1994, the 2nd respondent informed him that he was selected and placed at Sl.No.3 in the merit list. The candidates at Sl.Nos.1 and 2 were promoted promptly to the post of Chargehand (Machinist) on permanent basis. However, he was promoted to the post of Chargehand (Machinist) on *ad hoc* basis for a period of six weeks by an Office Order dated 29-12-1994. Subsequently, he was reverted to the post of Machinist Grade I. While so, the 3rd respondent, who was appointed as Machinist Grade II with effect from 23-2-1982, was promoted to the post of Machinist Grade I during July,1994. Further, the 3rd respondent was promoted to the post of Chargehand (Machinist) on *ad hoc* basis with effect from 27-1-1996 vide Office Order dated 10-2-1996. Respondent No.3 is not entitled for promotion, as he was never subjected to selection process for the post of Chargehand (Machinist). Nonetheless, the 3rd respondent was appointed on *ad hoc* basis ignoring his legitimate claim and right. He learnt that the 2nd respondent is trying to fill up the post

of Chargehand (Machinist) by the 3rd respondent on regular basis; showing the vacancy as a carry forward point against Scheduled Caste candidate as per the roaster. In fact, the candidates belonging to SC category are more than required. Therefore, this vacancy ought not to have been allotted to the SC candidate. It is also his case that as per Para 2.1(iii)(b) of Chapter II of 'Brochure on Reservation for SC/ST in the services' the reservation policy as contemplated is subject to exemptions and exclusions contained in Chapter III of the Brochure. The reservation policy is not at all applicable to the category of Chargehand (Machinist) as it involves the element of direct recruitment by 100%. However, the management is applying reservation policy to the category of Chargehand (Machinist) for quite some time, which is not necessary. If the reservation policy is not adopted, the 3rd respondent would not get the promotion even on *ad hoc* basis. Hence, this writ petition.

On behalf of respondents 1 and 2 a detailed counter affidavit has bee filed denying the allegations made by the petitioner. *Inter alia* it is stated that the petitioner without knowing the rule and vacancy position has chosen to claim for the post of 3rd respondent. Consequent upon de-reserving point No.14 SC post, the said point was shifted to point No.16, which was originally a general category post. Respondent No.3 is an SC candidate. He was initially appointed as Machinist Grade II with effect from 23-3-1982 and promoted as Machinist Grade I in July,1994. In view of the retirement of one Raghuram Reddy from service as a Chargehand (Machinist), a vacancy arose and the said vacancy has fallen for the reserved category (SC), which was carried forward from point No.14. Respondent No.3 being SC candidate and has put in eligibility of one year service as per Recruitment and Promotion Rules for Scheduled Castes, he was promoted as Chargehand (Machinist) on *ad hoc* basis with effect from 27-1-1996 pending selection, by an Office Order dated 10-2-1996. The petitioner being an OC candidate though he was selected, was kept in the panel and he cannot claim promotion against the reserved roaster point. In fact, the 16th point in the roaster was originally unreserved point of 40 point communal roaster and by virtue of carrying forward 14th point to 16th, it has become reserved post for SC candidate. Therefore, the allegations made by the petitioner are all without any subsistence. The allegation of the petitioner that in promotions, there are no reservations is not correct. As far as Scheduled Castes and Scheduled Tribes

are concerned, even in promotions, reservation has to be given. The official respondents have followed the procedure strictly as per the rules and the constitutional provisions. The writ petition is devoid of merits and liable to be dismissed.

Heard both sides.

Admittedly, the 14th point in a roaster of 40-point communal roaster of Chargehand (Machinist) in Visakhapatnam Port Trust, which was reserved for Scheduled Caste candidate, was carried forward to 16th point, which was meant for general category. Therefore, the 3rd respondent being a SC candidate was promoted on *ad hoc* basis, subject to the selections to be conducted by the Visakhapatnam Port Trust. May be, the petitioner is senior in the category of Machinist Grade II and also Machinist Grade I, to the 3rd respondent. May be, the petitioner was also selected in the selections held by a duly constituted selection committee on 22-6-1994 and placed at Sl.No.3 and was also promoted on *ad hoc* basis in a leave vacancy for a period of six weeks from 29-12-1994, but that itself would not confer any right on the petitioner. When a regular vacancy, which was carried forward arose at Sl.No.16 meant for SC candidate, the case of the 3rd respondent, who is, admittedly, an SC candidate was considered and promoted to the post of Chargehand (Machinist) with effect from 10-2-1996, subject to further selection by a duly constituted selection committee. Further, the argument of the learned counsel for the petitioner that there is no provision for reserving a roaster point to the SC/ST candidate in the promotion channel is not acceptable in view of Article 16 (4A) of the Constitution of India. Therefore, the claim of the petitioner is of imaginary and speculative. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

12-4-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, Board of Trustees,
Visakhapatnam Port Trust, Visakhapatnam.
2 The Chief Mechanical Engineer, Visakhapatnam Port Trust,
Visakhapatnam.
3 **2 CD copies**